

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS, *et al.*,

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Plaintiffs,

v.

Case No. 3:21-cv-00259
[Lead Case]

GREG ABBOTT, *et al.*,

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Defendants.

UNITED STATES OF AMERICA,

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Plaintiff,

v.

Case No. 3:21-cv-00299
[Consolidated Case]

STATE OF TEXAS, *et al.*,

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Defendants.

**STATE DEFENDANTS' AND LEGISLATIVE SUBPOENA RECIPIENTS' OPPOSED
MOTION FOR BRIEFING SCHEDULE AND, IN THE ALTERNATIVE, UNOP-
POSED MOTION FOR LEAVE TO EXCEED PAGE LIMIT**

State Defendants and Legislative Subpoena Recipients (“Movants”) respectfully request a modified briefing schedule for the parties’ supplemental briefs regarding pending legislative privilege discovery motions. The modified schedule would allow the parties to address the Fifth Circuit’s recent vacatur of one of this Court’s legislative privilege orders as part of the parties’ ongoing supplemental briefing regarding all pending legislative privilege motions, in an effort to avoid duplicative briefing and prolonging the resolution of the legislative privilege issues. In the alternative, if this Court were to leave the current briefing schedule as it is, Movants seek this Court’s leave to file a response that does not exceed 25 pages. In support of this motion, Movants state as follows:

1. On May 17, 2023, the Fifth Circuit issued its opinion in *La Union Pueblo Entero v. Abbott (Hughes)*, 68 F.4th 228 (5th Cir. 2023), which analyzed legislative privilege issues relevant to this case. To address the impact of *Hughes* on the pending discovery motions, the parties jointly moved for a briefing schedule to submit supplemental briefs. *See* Jt. Mot. to File Supplemental Briefing 2 (ECF 702). On May 26, 2023, this Court adopted the parties' briefing schedule. *See* Briefing Order 1-2 (ECF 703).

2. Under the briefing schedule, both the United States and Private Plaintiffs filed supplemental briefs, totaling 40 pages, on June 23, 2023 and June 24, 2023, respectively. United States Supp. Br. (ECF 706); Pls. Supp. Br. (ECF 707). The briefing schedule anticipates State Defendants and Legislative Subpoena Recipients to file one brief not exceeding 20 pages this Friday, July 28, 2023. *See* Briefing Order 1.

3. In the meantime, on July 18, 2023, in light of *Hughes*, the Fifth Circuit vacated this Court's July 25, 2022 Order (ECF 467), compelling the production of documents. *See* Order, *LULAC v. Patrick*, No. 22-50662 (5th Cir. July 18, 2023) (ECF 107). The vacated order turns on the same legislative privilege issues as *Hughes* and other legislative privilege motions currently pending in this Court. On the same day, the United States advised this Court that it would "confer with the parties on next steps and advise the Court regarding a proposed briefing schedule." Notice 2 (ECF 715).

4. On July 21, 2023, the United States proposed a briefing schedule that would require the parties to file a second set of briefs in late August and September regarding the *Patrick* vacatur, as follows:

- The United States (and Private Plaintiffs) would file supplemental briefs (not exceeding 10 pages) by August 9;
- State Defendants and Legislators would file supplemental response briefs (not exceeding 10 pages) by August 31;
- The United States (and Private Plaintiffs) would file replies (not exceeding 5 pages) by September 21.

5. The same day, Movants suggested that the parties could avoid duplicative briefing by streamlining all briefing on legislative privilege issues as follows:

- Postpone Movants' deadline to respond to the United States and Private Plaintiffs' supplemental briefs filed on June 24 (currently July 28);
- The United States and Private Plaintiffs would file second supplemental briefs (not exceeding 10 pages) regarding the *Patrick* vacatur by either July 28 or August 4;
- Movants would respond to all supplemental briefs with one consolidated response (not exceeding 40 pages) by either August 18 or August 25; and
- The United States and Private Plaintiffs would file replies in support of all supplemental briefs (not exceeding 15 pages) on a date that would work best for the United States and Private Plaintiffs.

6. Movants' proposal reduces the number of briefs filed on the same legislative privilege issues. And Movants' proposal would allow briefing to be completed sooner so as not to prolong the Court's resolution of the longstanding legislative privilege issues.

7. On July 25 and July 26, the parties conferred. Counsel for the United States and Private Plaintiffs oppose Movants' proposal and wished to proceed with a separate set of briefing regarding the *Patrick* vacatur. Counsel for the United States stated that he believes it is "unfair for [Movants] to get an extra four weeks (so a total of nine week) to craft [their] response to [the] opening brief[s]—and require [the United States and Private Plaintiffs] to quickly draft and file another brief before then."

8. Movants oppose the United States' duplicative briefing proposal. The parties are currently in the middle of a briefing schedule for supplemental briefs regarding all other open motions regarding legislative privilege. Movants' response brief is due this Friday, July 28. The United States' proposal will require the parties to submit duplicative briefs on the same legal issues through late September and prolong the Court's resolution of those issues.

9. To avoid duplicative briefing and to avoid further delay in the resolution of the pending legislative privilege issues, Movants request that the Court adopt a briefing schedule that would

streamline briefing by (1) postponing Movants' response brief deadline of July 28, 2023; (2) allowing the United States and Private Plaintiffs to file their requested 10-page supplemental briefs regarding legislatively privileged documents by August 11, 2023; (3) allowing Movants to then file a single 40-page response brief to all legislative privilege briefing by August 25, 2023; and (4) allowing the United States and Private Plaintiffs to each file a 15-page reply in support of all legislative privilege briefs by September 8, 2023.

10. Under this proposed schedule, the United States and Private Plaintiffs will have longer time to submit their second supplemental briefs than under the United States' proposal. And Movants' schedule will conclude sooner and yield fewer redundant briefs than the United States' proposal.

11. In the alternative, if the current briefing schedule remains in place for the legislative privilege supplemental briefs, Movants request this Court's leave for an additional five pages.

12. This modest extension will enable Movants to fully address the different arguments raised by the United States' and Private Plaintiffs' separate briefs, totaling 40 pages. Plaintiffs do not oppose this alternative request.

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For the foregoing reasons, Movants request that the Court adopt their briefing schedule to streamline the legislative privilege supplemental briefs. In the alternative, Movants request that the Court grant leave so that they can file a response by July 28 that does not exceed 25 pages.

Date: July 26, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on July 26, 2023, and that all counsel of record were served by CM/ECF.

/s/ Taylor A.R. Meehan
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